IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10736 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MOHAMMAD MUSLIM ALIAS MAMA S/O BARKATULLA RAJPUT (MUSLIM) - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR AY KOGJE GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/09/2006

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of detention dated 01.04.2006 passed by Commissioner of Police, Ahmedabad city under sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'PASA Act').

2.0 Learned Advocate for the detenu has invited my attention to the order of detention

dated 01.04.2006 as well as grounds supplied therein, by which detenu was detained and sent to District Jail, Surat. As the grounds of detention one criminal case has been shown as registered against the detenu. The offence is registered as being C.R.-I No.8 of 2006 at D.C.B. Police Station, Ahmedabad city dated 01.03.2006. In connection with the said offence, the Authority has recovered one country made 'Tamancha' valued at Rs.5,000/-, 16 country made guns valued at Rs.1,60,000/-, 177 cartridges valued at Rs.6,875/-, 2 'Sutri Bomb', 4 country made canons valued at Rs.20,000/-, 1 plastic bag and 1 cloth bag, 1 spectacle cover, residues of disposed explosives, spare parts of country made gun valued at Rs.500/- and two used cartridges. In connection with the case mentioned above, the investigation is going on. In the impugned order, it was also stated that the Authority has recorded the statement of witnesses, 'Panchnama' and statements of other co-accused in this behalf.

2.1 Learned Advocate for the detenu has

submitted that on the basis of the aforesaid criminal case registered against the detenu, the Authority has come to the conclusion that the activities of the detenu are detrimental to the maintenance of 'public order' and, hence, detenu falls within the definition of 'dangerous person' within the meaning of Section 2(c) of the PASA Act. The Authority has, therefore, passed the order of detention against the detenu.

2.2 Learned Advocate for the detenu has submitted that the detaining Authority has arrived at subjective satisfaction on the basis of the irrelevant material. He has further submitted that the incident which has been narrated above, there may be only breach of 'law and order' situation and not 'public order'. In support of the same learned Advocate for the detenu has placed reliance on a decision of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police & Ors."*** reported in 1995 (2) GLR 1268 wherein at Para-8, the Apex Court has observed as under,

"**8.** The Act has defined "dangerous person" in clause © of Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to the *The Law Lexicon by P. Ramanatha Aiyar, Reprint Ed. (1987), p. 499,* 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in *Aiyar's Judicial Dictionary, 10th Edn., p. 485*. it does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such case which lead to a reasonable conclusion that the person is a habitual criminal. In *Gopalanchari v. State of Kerala,* AIR 1981 SC 674 this Court had an occasion to deal with expressions like "bad habit", 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in *Vijay Narain Singh v. State of Bihar,* 1984 (3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it

> implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause © of Sec.2 of the Act. There should be positve material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under the **commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. Or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec.2(cA) of the Act**.

2.3 Learned Advocate for the detenu has further placed reliance on a Division Bench judgment of this Court in the case of "***Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others"*** reported in 2000 (1) GLH 393 wherein at Para-22, it was held under,

> "**22**. So far as the case against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining Authority. Regarding two statements, **having taken into account the law laid down**

by the Supreme Court in Ram Manohar Lohia Vs. State of Bihar reported in AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of 'law and order' and not 'public order'. The subjective satisfaction arrived at by the detaining Authority, therefore, cannot be said to be legal, valid and in accordance with law. Since, in the facts and circumstances, an order of detention could have been passed by the detaining Authority for maintenance of 'public order', the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

2.4 He has further placed reliance on a decision of this Court in the case of ***"Brijeshkumar S/o. Ramsing Asharam Mishra Vs. State of Gujarat and Ors."*** reported in 2006(1)GLH 400 wherein it has been held that **mere registration of criminal cases under Arms Act cannot be said to be sufficient enough to arrive at the subjective satisfaction that the activities of the detenu are prejudicial to maintenance of "Public Order".**

2.5 Learned Advocate for the detenu has

further raised a contention that, since copies of relevant documents, relied upon by the detaining Authority for passing the impugned order, were not supplied to the detenu, the impugned order deserves to be quash and set aside. In support of above contention, learned Advocate has placed reliance on a decision of the Apex Court in the case of ***"State of U.P. Vs. Kamal Kishore Saini"*** reported in (1988)1 SCC 287 wherein at Para-15 the Apex Court has observed as under,

> "**15**. The impugned order of detention was clamped on November 28, 1985 and the period of one year as provided in Section 13 of the National Security act has also expired. Moreover, we have already upheld the finding of the High Court that the order of detention is illegal and bad for non-supply of vital documents to the detenus to enable them to make an effective representation against the grounds of detention and as such their right to make an effective representation as contemplated under Article 22(5) of the Constitution of India has been infringed rendering the impugned order as illegal and bad. Furthermore, the **non-production of relevant material i.e. the statement of the undertrial prisoners in their application in the court that the detenus had been falsely implicated in the Crime Case No.450 of 1985 under Section 307/34 IPC as mentioned in ground No.3 and also the statement to that effect in the bail**

petition and the police report thereon, before the detaining Authority for his consideration before passing the order of detention, renders the order of detention invalid and illegal.”

3.0 On the contrary, learned A.G.P. has supported the order of detaining Authority and has submitted that registration of the aforesaid criminal case and statements of witnesses against the detenu would go to show that detenu was indulging in such serious activities which can be said to be prejudicial to the maintenance of 'public order'. Learned Counsel further submitted that there is sufficient material before the detaining Authority to pass the order of detention and no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

4.0 Heard learned Counsel for the parties and after perusal of the record, I am of the view that the detaining Authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have also considered factual and legal aspects emerging

from the record of the petition and considered the rival submissions. Taking into consideration, facts and circumstances of the case and allegations made against the detenu it can be, at the most, said that there is disturbance of only 'law and order' and not 'public order'. Therefore, in view of the decisions of the Apex Court in the case of ***"Mustakmiya Jabbarmiya Shaikh"***(Supra) and ***"State of U.P."*** (Supra) as well as judgment of this Court in the case of ***"Ashokbhai Jivraj @ Jivabhai Solanki"***(Supra) and ***"Brijeshkumar S/o. Ramsing Asharam Mishra"*** (Supra), the order of detention cannot be sustained and deserves to be quashed and set aside.

5.0 In the result, this petition is allowed. The order of detention dated 01.04.2006 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case by the Authority. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.S. Jhaveri,J.)

Umesh/